



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 629167

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 629165, 629166, and 629167, the claimant appeals from the decisions of the Administrative Law Judge filed April 26, 2023, which sustained the initial determinations, holding the claimant ineligible to receive benefits, effective beginning March 9, 2020 and ending June 6, 2021 on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$8,700 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$7,826 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$2,478.90 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The employer has indicated that it failed to appear at the last hearing because its' witness was on vacation. In the interest of justice, the Board has determined to provide the employer another opportunity to appear and testify at the hearing.

The claimant should produce a copy of his 2020 and 2021 Federal income tax returns prior to the remand hearing including, but not be limited to, copies of any and all schedules reporting income, and specifically any and all W2s, 1099s and Schedules C filed with the returns. The failure to produce the documentation may result in the Judge taking an adverse inference.

In addition, the Commissioner of Labor should produce documentation and testify regarding what, if any, wages the claimant earned and/or received from State Farm Insurance.

At the remand hearing, the Judge shall also offer the claimant, employer, and the Commissioner of Labor representative opportunities to cross-examine each other and to object to the admissibility of the exhibits entered into the record. To this same end, the parties shall be given an opportunity to review the transcript from the original hearing on April 24, 2023, in advance of the scheduled remand hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant should produce a copy of his 2020 and 2021 Federal income tax returns prior to or at the remand hearing including, but not be limited to, copies of any and all schedules reporting income, and specifically any and all W2s, 1099s and Schedules C filed with the returns; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the

testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER